

CHAPTER 18
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD
OF TRANSACTION OR USAGE
[Prior to 12/17/86, Revenue Department[730]]

701—18.1(422,423) Tangible personal property purchased from the United States government. Tangible personal property purchased from the United States government or any of the governmental agencies shall be exempt from sales tax, but such purchases shall be taxable to the purchaser under the provisions of the use tax law. Persons making purchases from the United States government, unless exempt from the provisions of Iowa Code section 422.44, shall report and pay use tax at the current rate on the purchase price of such purchases.

This rule is intended to implement Iowa Code sections 422.44 and 423.3.

701—18.2(422,423) Sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes shall be taxable.

When gas of this type is sold and motor vehicle fuel tax is collected by the seller, tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, tax shall be collected and remitted to the department, unless the sale is specifically exempt.

If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes application for a refund of the motor vehicle fuel tax.

The gross receipts from the rental of cylinders, drums and other similar containers by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. Gas converter equipment which might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(11), 423.1 and 423.2.

701—18.3(422,423) Chemical compounds used to treat water. Chemical compounds placed in water which is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water which is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds which are used to treat water that is not sold at retail or which are not used directly in processing shall be subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and does become a part of the finished product, shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1, and 423.2.

701—18.4(422) Mortgages and trustees. Pursuant to the provisions of a chattel mortgage, the receipts from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

The tax applies to inventory and noninventory goods provided the owner is in the business of making retail sales of tangible personal property or taxable services. In *Re Hubs Repair Shop, Inc.* 28 B.R. 858 (Bkrtcy. 1983).

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1 and 423.2.

701—18.5(422,423) Sales to agencies or instrumentalities of federal, state, county and municipal government.

18.5(1) The gross receipts from the sale of tangible personal property or enumerated taxable services made directly by or to the United States government or to recognized agencies or departments of the United States government shall not be subject to sales tax.

The gross receipts from sales at retail made directly to patients, inmates or employees of an institution or department of the United States government shall be taxable, since they are not made directly to the government. However, sales similarly made by post exchanges and other establishments organized and controlled by federal authority shall not be subject to sales tax.

18.5(2) The gross receipts from sales to the United States government, state of Iowa, or federal bureaus, departments, or instrumentalities are not taxable. A sale to government occurs only if a government, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. No sale to government occurs if a government pays some portion of the cost of sale of an item of tangible personal property but title to and ownership of the property are transferred to another person as a result of the sale. See *AVCO Manufacturing Corporation v. Connelly*, 145 Conn. 161, 140 A.2d 479 (1958) and *Akron Home Medical Services, Inc. v. Lindley*, 25 Ohio St.3d 107, 495 N.E.2d 417 (1986).

EXAMPLE A: Patient A purchases a hospital bed from a drugstore. A percentage of patient A's bill is paid by federal funds from Medicaid. Patient A has purchased a hospital bed, not the federal government, and Iowa tax is due as a result of this sale.

EXAMPLE B: A is a federal government employee. A stays at a hotel while on government business and eats meals there. A pays for the hotel room (treated as the sale of tangible personal property under Iowa sales tax law) and the meals with a credit card. The credit card was issued in A's name, and the cost of the room and meals is billed to A, who pays it. The federal government later reimburses A the entire cost of the room and meals. A has purchased the room and meals, and Iowa sales tax should be charged accordingly.

EXAMPLE C: B is a federal government employee who eats at a restaurant while on government business. B uses a credit card to pay for the meal. The credit card is issued in B's name, but the cost of the meal is billed to the U.S. government which pays that cost. In this situation, the government is the purchaser of the meal on B's behalf, and the sale is exempt from tax.

See rule 701—34.12(423) for an example of the application of this subrule to the motor vehicle use tax.

18.5(3) The gross receipts from the sale of goods, wares, merchandise, or services used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of human services, state department of transportation, and all divisions, boards, commissions, agencies, or instrumentalities of the state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except the sale of goods, wares, merchandise or services used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, pay television service, or heat to the general public, shall be exempt. The exclusion from exemption for municipally owned pay television service is applicable to sales occurring and services provided on and after July 1, 1991. On and after April 1, 1992, providing sewage service or solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality shall be taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information). Goods, wares, merchandise, or services used for public purposes and sold to any municipally owned solid waste facility which sells all or part of its processed waste as a fuel to a municipally owned public utility shall be exempt.

EXAMPLES:

a. A group of exempt instrumentalities, such as cities, issues bonds to finance the construction of a sewage disposal facility. X, a corporation, purchases the bonds but is not involved in the project in any other way. Since X does not enjoy the benefits of earnings of the solid waste facility, the exemption provided the instrumentalities is applicable.

b. Corporation Y, which is an instrumentality of the federal government and which Congress has allowed by statute to be subject to state sales and use taxes, purchases tangible personal property. Said purchases are subject to tax because the profits of the corporation are distributed to the stockholders thereof.

c. An instrumentality of government includes an area agency on aging as designated by the Iowa department of elder affairs pursuant to Iowa Code section 231.32.

This tax exemption does not apply to independent contractors who deal with agencies, instrumentalities, or other entities of government. These contractors do not, by virtue of their contracting with governmental entities, acquire any immunity or exemption from taxation for themselves. Sales to these contractors remain subject to tax, even if those sales are of goods or services which a contractor will use in the performance of a contract with a governmental entity. This principle is applicable to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor. See 701—Chapter 19. See also *NLO, Inc. v. Limbach*, 613 N.E.2d 193, 66 Ohio St.3d 389 (1993); *Bill Roberts Inc. v. McNamara*, 539 So.2d 1226 (La. 1989) reh. den. April 27, 1989; *White Oak Corporation v. Department of Revenue Services*, 503 A.2d 582, 198 Conn. 413 (1986).

This rule is intended to implement Iowa Code section 422.45(5).

701—18.6(422,423) Relief agencies.

18.6(1) Relief agency means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work. Nonexclusive examples of relief agencies are Salvation Army, Royal Neighbors, and Masonic Lodge. The sales of tangible personal property or enumerated services to relief agencies are subject to tax. A relief agency may apply to the director for refund of the amount of tax imposed and paid by it, upon the purchase of goods, wares, merchandise, or services rendered, furnished, or performed that are used for free distribution to the poor and needy.

18.6(2) Persons are determined to be in the poor and needy category when their incomes and resources are at or below poverty level. The department will use federal poverty guidelines in making this determination.

18.6(3) Listed below are some examples where the tax may or may not be refunded to the relief agency:

EXAMPLE: A relief agency purchases clothing for free distribution to a poor and needy person. The tax is refundable.

EXAMPLE: A relief agency pays the gas, light, or telephone bill for a person who is poor and needy. The tax is refundable.

EXAMPLE: An agency purchases items of clothing for residents of their living facility, and is partially reimbursed by the person using the items based upon the recipient's ability to pay. Tax on the portion of cost not recovered by the agency can be claimed as a refund of tax paid by using formula stated in 18.6(6).

18.6(4) Demolition v. repair costs. A nonprofit noneducational relief agency is not entitled to a refund of sales tax paid by contractors on building materials used in the alteration, expansion, repair, remodeling or construction of the facility since the materials were sold tax paid to the contractor who is the consumer of the material by statute. See Iowa Code section 422.42(9). However, the relief agency would be entitled to a refund of sales tax paid on the cost of the demolition of the building since the demolition of the building indirectly benefited the poor and needy. 1968 O.A.G. #841.

EXAMPLE: A relief agency, which is not part of a governmental unit, operates a home or orphanage for persons who are poor and needy or for orphan children. Food, lodging, and necessary items are furnished free-of-charge to the residents. The relief agency would be entitled to a refund of any taxes paid to operate this facility; such as, but not limited to, lights, heat, water, telephone, and repair items or services needed to maintain the facility.

18.6(5) Claims for refund must be filed quarterly with the department within 45 days after the end of the quarter for which the refund is claimed. Claims are to be submitted on forms provided by the department.

The claim shall include the following information:

- a. The total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed used for free distribution to the poor and needy.
- b. List the persons making the sales to the relief agency.
 1. Include the date of the sale.
 2. Include the total amount expended, itemizing sales tax.
 3. Include the date of payment.
 4. Include the check number, receipt number, or paid invoice verifying payment.
- c. List the total operating income received (residents, donations, etc.)
- d. List the operating income received from residents only.
- e. The claim shall be signed by an authorized agent of the relief agency.

18.6(6) When a relief agency receives part of its operating income from the poor and needy it is serving, this income will be considered in computing the tax refund paid upon sales to it of products or services used for free distribution to the poor and needy.

To reasonably approximate the correct amount of tax to be refunded, where only a portion of the tax qualifies for refund, a formula will be used by the department. The prescribed formula the department will allow is operating income received from the poor and needy served divided by total operating income received. This percentage will be multiplied by the applicable gross receipts which are considered refundable to arrive at the correct amount of tax to be refunded.

If a person requests an alternative formula, the person shall first list the reasons why an alternative formula is necessary and, secondly, shall outline the proposed formula in detail. If approval is given, the department reserves the right to withdraw the approval or require adjustments in the formula upon notice to the person. Additional refunds or assessments may be made if an audit discloses the formula is incorrect.

This rule is intended to implement Iowa Code sections 422.42(7), 422.43, 422.47, 423.1 and 423.2.

701—18.7(422,423) Containers, including packing cases, shipping cases, wrapping material and similar items. The gross receipts from the sale of containers, labels, cartons, pallets, packing cases, wrapping paper, twine, bags, bottles, shipping cases, garment hangers, and other similar articles and receptacles sold to retailers or manufacturers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property which is sold either at retail or for resale shall be exempt from the tax.

For the purpose of this rule, producers, wholesalers and jobbers are considered retailers or manufacturers.

18.7(1) Sales to other than retailers or manufacturers.

a. Containers and all other specified items delivered with tangible personal property which are sold to a final buyer or ultimate consumer shall be exempt from the tax when no separate charge is made for the container. This group includes such items as boxes, cartons, pallets, paper bags, bottles, shipping cases, wrapping paper and twine. If a separate charge is made for the container, the sale of the container is subject to the tax. The sale of wrapping paper, paper bags and like items are subject to the tax when sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers to whom meat is sold. The wrapping paper and tape would be exempt from tax as being purchased as a packaging material of tangible personal property sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers who own the meat. The meat locker only performs the service of processing the meat. The wrapping paper and tape are subject to tax as they were not purchased for packaging or for the facilitating of transportation of tangible personal property sold at retail, but were used in the rendering of a service.

b. Packing paper, lining paper, paper used to line boxes and crates, and similar items shall be exempt from the tax if delivered with tangible personal property ultimately sold at retail when no separate charge is made for the paper.

18.7(2) Labels, tags and nameplates. Sales of labels, tags, and nameplates attached to products for the benefit of the vendor such as shipping tags, price tags and instructions to cashiers are subject to the tax, unless such items are sold to manufacturers and retailers for packaging or facilitating the transportation of tangible personal property ultimately sold at retail. Labels, tags or nameplates attached to products for the benefit of the final consumer which describe contents, or which relate to the product and are affixed to the product, are exempt from tax.

18.7(3) Pallets. Pallets purchased by manufacturers or retailers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property ultimately sold at retail shall be exempt from the tax.

18.7(4) Garment hangers. Garment hangers purchased by manufacturers or retailers and used to facilitate the transportation of tangible personal property or garment hangers delivered with tangible personal property ultimately sold at retail when no separate charge is made are exempt from tax.

Garment hangers used merely to display tangible personal property are taxable.

This rule is intended to implement Iowa Code sections 422.42(3), 422.45(19) and 423.1(1).

701—18.8(422) Auctioneers.

18.8(1) An auctioneer in making a sale, whether of tangible personal property or realty, is by virtue of this employment making the sale as the agent of the principal.

18.8(2) Where an auctioneer is conducting a sale and the principal meets the requirement of the casual sale exemption found in Iowa Code section 422.42(12), the gross receipts from the sale are exempt from the tax. See 1970 O.A.G. 774.

18.8(3) When an auctioneer is conducting a sale and the principal is in the business of making sales of tangible personal property or taxable services on a recurring basis, the gross receipts from the sale are taxable.

18.8(4) Where an auctioneer is selling tangible personal property that the auctioneer owns, the sale of the tangible property owned by the auctioneer is taxable.

This rule is intended to implement Iowa Code section 422.43.

701—18.9(422) Sales by farmers. The sale of grain, livestock or any other farm or garden product by the producer thereof ordinarily constitutes a sale for resale, processing or human consumption and shall not be subject to tax.

Farmers selling tangible personal property not otherwise exempt to ultimate consumers or users shall hold a permit and collect and remit sales tax on the gross receipts from their sales.

701—18.10(422,423) Florists.

18.10(1) Florists are engaged in the business of selling tangible personal property at retail and shall be liable for payment of tax measured by the receipts from the sale of flowers, wreaths, bouquets, potted plants and other items of tangible personal property.

18.10(2) When florists conduct transactions through a florists' telephonic delivery association, the following rules shall apply when computing tax liability:

a. On all orders taken by an Iowa florist and telephoned to a second florist in Iowa for delivery in the state, the sending florist shall be liable for tax, measured at the current rate of tax on gross receipts from the total amount collected from the customer, except the cost of a telegram when a separate charge is made therefor.

b. In cases where a florist receives an order pursuant to which the florist gives telephonic instructions to a second florist located outside Iowa for delivery to a point outside Iowa, tax is not owing with respect to any receipts which the florist may realize from the transaction.

c. In cases where Iowa florists receive telephonic instructions from other florists located either within or outside of Iowa for the delivery of flowers, the receiving florist will not be held liable for tax with respect to any receipts which the florist may realize from the transaction.

d. Rescinded IAB 2/28/96, effective 4/3/96.

18.10(3) Florists engaged in selling shrubbery, trees, and similar items. See rule 18.11(422,423).

This rule is intended to implement Iowa Code section 422.43.

701—18.11(422,423) Landscaping materials. The gross receipts from the sale of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips and other similar landscaping materials, when used for landscaping and sold to final consumers, shall be subject to sales tax. For the purpose of this rule, "final consumer" ordinarily means the owner of the land to which the landscaping materials are applied, or a general building contractor when the landscaping contractor contracts with the general building contractor. When a landscaping contractor uses materials to fulfill a contract, the landscape contractor is considered the retailer of the landscaping materials and shall be obligated to collect sales tax on the selling price from the final consumer.

When the retailer of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips and other similar landscaping materials installs these items as a part of a contract for landscaping or improving land for a lump sum, the entire gross receipts shall be subject to tax. Any retailer's charges for "landscaping" shall be taxable. See rule 701—26.62(422) for a description of this service. However, a retailer's charges for nontaxable services are not taxable if contracted for separately; or, if no written contract exists, the charges are itemized separately on the invoice.

EXAMPLE: A sodding contractor agrees to furnish and install 20 yards of sod for the lump sum of \$20.00 per yard. The sodding contractor must charge the customer \$20.00 sales tax (5% x \$400.00).

EXAMPLE: XYZ Company enters into a contract for the landscaping of an existing office building. XYZ Company agrees to furnish shrubs at \$25.00 each, white rock for \$5.00 per bag and woodchips for \$4.00 per bag. XYZ Company also contracts to install all of the landscaping materials for a fee of \$25.00 per hour. XYZ Company's hourly fee is taxable if paid for the service of "landscaping" or for some other taxable service, e.g., excavation. If the service is not taxable, the charge is excluded from tax because it was separately contracted for.

The gross receipts from the sale of uncut sod and unexcavated trees, shrubs, and rock shall not be subject to sales or use tax. This is considered a sale of intangible property and not the sale of tangible personal property.

This rule does not apply to the gross receipts from the sale of plants and trees which are eligible for purchase with food coupons under rule 701—20.1(422,423).

This rule is intended to implement Iowa Code sections 422.42, 422.45(12) and 423.1.

701—18.12(422,423) Hatcheries. The gross receipts from the sale of egg-type cockerel chicks, broiler chicks and turkey poults shall be subject to tax.

When pullets and poults are sold for production purposes, the receipts from the sales shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.13(422,423) Sales by the state of Iowa, its agencies and instrumentalities. The state of Iowa, its agencies and instrumentalities, are required to collect and remit tax on the gross receipts from taxable retail sales of tangible personal property and taxable services.

This rule does not apply to sales made by cities and counties in the state of Iowa which are specifically exempted from collecting tax by Iowa Code section 422.45(20).

This rule is intended to implement Iowa Code chapters 422 and 423.

701—18.14(422,423) Sales of livestock and poultry feeds. Tax shall not apply to the sale of feed for any form of animal life when the product of the animals constitutes food for human consumption. Tax shall apply on feed sold for consumption by pets.

Antibiotics, when administered as an additive to feed or drinking water, and vitamins and minerals sold for livestock and poultry shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.15(422,423) Student fraternities and sororities. Student fraternities and sororities are not considered to be engaged in the business of selling tangible personal property at retail within the meaning of the sales tax law when they provide their members with meals and lodging for which a flat rate or lump sum is charged. A person engaged in the selling of foods and beverages to such organizations for use in the preparation of meals is making exempt sales at retail and shall not be liable for tax if the food purchases would be exempt under rule 701—20.1(422,423).

Student fraternities or sororities engaged in the business of serving meals to persons other than members for which separate charges are made, or owning and operating canteens through which tangible personal property is sold are deemed to be making taxable sales.

When student fraternities or sororities do not provide their own meals but are provided by caterers, concessionaires or other persons, such caterers, concessionaires or other persons shall be liable for the collection and remittance of tax with respect to their receipts from meals furnished. A similar liability is attached to persons engaged in the business of operating boarding houses, whether for students or other persons.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.16(422,423) Photographers and photostaters. Tax shall apply to the sale of photographs and photostat copies, whether or not produced to the special order of the customer and to charges for the making of photographs or photostat copies out of materials furnished by the customer. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not the expenses are itemized in billings to customers.

Tax shall not apply to the sale of tangible personal property to photographers and photostat producers which becomes an ingredient or component part of photographs or photostat copies sold, such as mounts, frames and sensitized paper; but tax shall apply to the sale of materials to photographers or producers which is used in the processing of photographs or photostat copies.

18.16(1) Sales of photographs to newspaper or magazine publishers for reproduction. The sale of photographs by a person engaged in the business of making and selling photographs to newspaper or magazine publishers for reproduction shall be taxable.

18.16(2) Reserved.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.17(422,423) Gravel and stone. When a contract is entered between a contractor and a governmental body and the contract calls for a stockpile delivery along a road to be improved, it is a sale of tangible personal property to the governmental body. Transactions of this type are exempt from tax. When a contract not only provides for the sale and delivery of materials but also the conversion of the materials into realty improvements, the contractor is the ultimate consumer of the material used and shall be liable for tax. Tax shall apply on the purchase price of the material.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(5), 423.1 and 423.2.

701—18.18(422,423) Sale of ice. The sale of ice for human consumption which may be purchased with food coupons is exempt from tax. The sale of ice used for cooling is subject to tax. See rule 701—20.1(422,423).

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(12), 423.2 and 423.4.

701—18.19(422,423) Antiques, curios, old coins or collector's postage stamps. Curios, antiques, art work, coins, collector's postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail and shall be subject to tax.

18.19(1) Stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors shall be taxable.

18.19(2) The distinction between stamps which are purchased by a collector and stamps which are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government is that which determines whether or not a stamp is taxable or not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, it shall not be subject to either sales or use tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.20(422) Communication services. The gross receipts from the sale of all communication services provided in this state are subject to tax. (Communication services are not subject to use tax. See Iowa Code sections 423.1(4) and 423.2.)

18.20(1) Definitions.

a. Communication service shall mean the act of providing, for a consideration, any medium or method for, or the act of transmission and receipt of, information between two or more points. Each point must be capable of both transmitting and receiving information if "communication" is to occur. The term "communication service" includes, but is not limited to, the transmission and receipt of sound, printed materials (including letters and materials printed by teletype), other images perceived visually and data encoded in computer languages. Any separate charge for the service of transmitting and receiving information between automatic data processing equipment and remote facilities shall be subject to tax, see paragraph 18.34(3)"c."

b. Communication service is provided "in this state" only if both the points of origination and termination of the communication are within the borders of Iowa. Communication service between any other points is "interstate" in nature and not subject to tax.

c. "Gross receipts" from the sale of communication service in this state shall mean all charges to any person which are necessary for the ultimate user to secure the service, except those charges which are in the nature of a sale for resale (see subrule 18.20(4)). Such charges shall be taxable if the charges are necessary to secure communication service in this state even though payment of the charge may also be necessary to secure other services. Any charge necessary to secure only interstate communication service shall not be subject to tax if the nature of the service is separately stated and the charge for the service separately billed. For the present, the charges imposed by the Federal Communications Commission and referred to as "access charges for interstate or foreign access services" to an "end user" shall not be subject to tax if separately stated and billed.

Charges imposed or approved by the utilities division of the department of commerce which are necessary to secure long distance service in this state, for example, "end user intrastate access charges," are taxable. Such charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

If company A collects gross receipts from ultimate users for communication services performed in this state by company B, company A shall treat those gross receipts as its own, collect tax upon them, and remit the tax to the department. The situation is similar to a consignment sale of tangible personal property, and tax must be remitted by the company collecting the gross receipts from the users of the communication services.

As of April 4, 1990, the amount of a surcharge for enhanced 911 emergency telephone service shall not be subject to sales tax if the amount is no more than \$1 per month per telephone access line and the surcharge is separately identified and separately billed. An enhanced 911 emergency telephone service surcharge is one which routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point.

18.20(2) This subrule is applicable to various specific circumstances involving the sale of communication services.

a. Companies which bill their subscribers for communication services on a quarterly, semiannual, annual or any other periodic basis shall include the amount of such billings in their gross receipts. The date of the billing shall determine the period for which sales tax shall be remitted. Thus, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the gross receipts contained in the bill shall be included in the sales tax return for the first quarter of the year. The same principle shall be used to determine when tax will be included in payment of a sales tax deposit to the department.

b. The gross receipts from the service of transmitting messages, night letters, day letters and all other messages of similar nature between two or more points within this state are subject to sales tax.

c. Receipts from communication services performed for all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government, and private, nonprofit educational institutions in this state for educational purposes are exempt from tax, except sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax.

18.20(3) This subrule is specifically applicable to companies and other persons providing telephone service in this state. Any reasoning contained in this subrule may also be applied to companies or other persons providing other communication services.

a. All companies must have a permit for each business office which provides communication service in this state. The companies must collect and remit tax upon the gross receipts from the operation of such offices.

b. If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax shall be computed on the minimum amount guaranteed or the actual taxable gross receipts collected whichever is the greater.

c. In computing tax due, the federal taxes identified as such, separately billed and payable by the customer shall be excluded from gross receipts. If the taxes are not separately billed, they shall be subject to Iowa sales tax.

d. Telegrams and like charges made to the accounts of subscribers and billed by companies providing telephone service which appear on the subscribers' toll bills are subject to tax.

e. Charges for directory assistance service rendered in this state shall be subject to tax. Charges for directory assistance service, separately stated and billed, shall not be subject to tax if the service is interstate in nature.

f. The gross receipts from the installation or repair of any inside wire which provides electrical current that allows an electronics device to function shall be subject to tax. Such gross receipts are from the enumerated service of electrical repair or installation, and are thus subject to tax. The gross receipts from “inside wire maintenance charges” for services performed under a service or warranty contract shall also be subject to tax. Depending on circumstances, such receipts are for the enumerated service of “electrical repair” or are incurred under an “optional service or warranty contract” for an enumerated service. In either event, the receipts are subject to tax. See rule 701—18.25(422,423).

g. The gross receipts from the rental of any device for home or office use or to provide a communication service to others shall be fully taxable; such receipts are for the enumerated service of “rental of tangible personal property.” The gross receipts from rental include rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device which is included in the gross receipts for the rental of the device shall also be subject to tax.

h. The sale of any device, new or used, in place at the time of sale on the customer’s premises or sold to the customer elsewhere is the sale of tangible personal property, and thus a sale subject to tax. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it does or does not come within the purview of the casual sales exemption, see Iowa Code section 422.42(2) and subrule 18.28(3). Other exemptions may be applicable as well. See Iowa Code section 422.45 and 701—Chapter 17.

i. The gross receipts for the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment shall, as a general rule, be subject to tax whether the customer or purchaser is billed by way of a flat fee or flat hourly charge covering all costs including labor and materials, or by way of a premises visit or trip charge, or by a single charge covering and not distinguishing between charges for labor and materials, or is billed by a charge with labor and material segregated, or is billed for labor only. An exception is this: If the gross receipts are for services on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, the gross receipts shall not be subject to tax. For further information concerning the conditions under which such gross receipts for repair or installation would not be subject to tax, see rule 701—19.1(422,423) and 701—subrule 26.2(1).

j. If a company bills a handling charge to a customer for sending the customer an electronic device by mail or by a delivery service, this charge shall constitute a part of the gross receipts from the sale of the device and shall be subject to tax. The gross receipts of a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the gross receipts from the sale of the property itself and thus subject to tax.

k. The purchase or rental of tangible personal property by companies providing communication services shall be subject to tax.

l. The amount of any deposit paid by a customer to a company providing communication service if returned to the customer shall not be subject to tax. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service shall be included in gross receipts or gross taxable services and shall be subject to tax.

m. On and after July 1, 1997, the gross receipts from sales of prepaid telephone calling cards and prepaid authorization numbers are subject to tax as sales of tangible personal property.

18.20(4) When one commercial communication company furnishes another commercial communication company services or facilities which are used by the second company in furnishing communication service to its customers, such services or facilities furnished to the second company are in the nature of a sale for resale; and the charges, including any carrier access charges, shall be exempt from sales tax. The charges for services or facilities initially purchased for resale and subsequently used or consumed by the second company shall be subject to tax, and the tax shall be collected and paid by the seller unless the seller has taken a valid exemption certificate in good faith from the purchaser and other requirements of 701—subrule 15.3(2) are met.

18.20(5) Prior to July 1, 1999, charges for access to or use of what is commonly referred to as the “Internet” or charges for other contracted on-line services are the gross receipts from the performance of a taxable service if access is by way of a local or in-state long distance telephone number and if the predominant service offered is two-way transmission and receipt of information from one site to another as described in paragraph “a” of subrule 18.20(1). If a user’s billing address is located in Iowa, a service provider should assume that Internet access or contracted on-line service is provided to that user in Iowa unless the user presents suitable evidence that the site or sites at which these services are furnished are located outside this state.

On and after July 1, 1999, gross receipts from charges paid to a provider for access to an on-line computer service are exempt from tax. An “on-line computer service” is one which provides for or enables multiple users to have computer access to the Internet. Charges paid to a provider for other contracted on-line services which do not provide access to the Internet and which are communication services remain subject to Iowa tax through May 14, 2000.

On and after May 15, 2000, the furnishing of any contracted on-line service is exempt from Iowa tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

***18.20(6)** The gross receipts paid for the performance of the service of sending or receiving any document commonly referred to as a “fax” from one point to another within this state are subject to sales tax. See 18.20(1) “a.” Gross receipts paid for the service of providing a telephone line or other transmission path for the use of what is commonly called a “fax” machine are the gross receipts from the performance of a taxable service if the points of transmission and receipt of a fax are in this state. See 18.20(1) “a” and “b.”

EXAMPLE A. Klear Kopy Services is located in Des Moines, Iowa. Klear Kopy charges a customer \$2 to transmit a fax (via its machine) to Dubuque, Iowa. The \$2 is taxable gross receipts. Midwest Telephone Company charges Klear Kopy \$500 per month for the intrastate communications on Klear Kopy’s dedicated fax line. The \$500 is also gross receipts from a taxable communication service.

EXAMPLE B. The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, break out the amount of a billing which is attributable to expenses for faxing. For example, “bill to John Smith for August, 1997, \$1,000 for legal services performed, fax expenses which are part of this billing—\$30.” The \$30 is not gross receipts for the performance of any taxable service, the faxing service performed being only incidental to the performance of the nontaxable legal services.

EXAMPLE C. The TUV Hospital is located in Cedar Rapids, Iowa. The surgeons successfully perform delicate brain surgery on patient W. To perform that surgery it was necessary for the surgeons to consult with a number of colleagues; the consultation was via E-mail. After the operation, the TUV Hospital sent patient W a bill for \$10,000 of nontaxable hospital services. Listed as an expense is “E-mail—\$200.” The E-mail services are performed incidentally to the nontaxable hospital services; therefore, the \$200 is not taxable gross receipts.

*Effective date of 2/19/97 delayed 70 days by the Administrative Rules Review Committee at its meeting held 2/10/97.

EXAMPLE D. D is a dentist practicing in Mason City, Iowa. D subscribes to an on-line service which, in return for a monthly fee, informs its subscribers of the latest dental surgery techniques and advises them about how these techniques can be applied to individual patients. After consultation on patient E's problem through the on-line service, D performs complex surgery on patient E. D's bill to patient E reads as follows: "dental reconstruction—\$2,750; on-line consultation portion—\$240." The \$240 is not taxable gross receipts, this charge being incidental to the nontaxable charge for dental work.

This rule is intended to implement Iowa Code sections 34A.7(1) "c"(2), 422.42(2), 422.42(3), 422.43(9), 422.45(5), 422.45(8), 422.45 and 422.51(1) and Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1189, section 29.

701—18.21(422,423) Morticians or funeral directors. A mortician or funeral director is engaged in the business of selling both tangible personal property and funeral services. Examples of the former are caskets, other burial containers, flowers, and grave clothing. Examples of the latter are cremation, transportation by hearse and embalming. Tax is due only upon gross receipts from the sale of tangible personal property and taxable services, and not upon gross receipts from the sale of nontaxable services.

If a mortician or funeral director separately itemizes charges for tangible personal property, taxable services and nontaxable services, as required by the rules of the Federal Trade Commission, or Iowa Code section 523A.8(1) "b," whichever is applicable, tax is due only upon the gross receipts from the sales of tangible personal property and taxable services. If contrary to the rules or the statute, or if the applicable rules are rescinded or the statute repealed, and the mortician or funeral director charges a lump sum to a customer covering the entire cost of the funeral without dividing the charges for sales of tangible personal property and taxable and nontaxable services, the mortician or funeral director shall report the full amount of the funeral bill less any cash advanced by the mortician or funeral director, with tax due on 50 percent of the difference. *Kistner v. Iowa State Board of Assessment and Review*, 224 Iowa 404, 280 N.W. 587 (1938). Cash advance items may include, but are not limited to, the following: cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians, singers, nurses, obituary notices, gratuities, and death certificates.

The mortician or funeral director is considered to be purchasing caskets, outer burial containers, and grave clothing for resale, and may purchase these items from suppliers without payment of tax. The mortician or director should present the supplier with a certificate of resale as set out in rule 701—15.3(422,423). A mortician or director is considered to be the user or consumer of office furniture and equipment, funeral home furnishings, advertising calendars, booklets, motor vehicles and accessories, embalming equipment, instruments, fluid and other chemicals used in embalming, cosmetics, and grave equipment, stretchers, baskets, and other items if title or possession does not pass to the customer. *Kistner*; *supra*.

For purposes of this rule, the terms of morticians or funeral directors shall also include cemeteries, cemetery associations and anyone engaged in activities similar to those discussed in the rule.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.22(422,423) Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians. Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians shall not be liable for tax on services rendered such as examinations, consultations, diagnosis, surgery and other kindred services, nor on the applicable exemptions prescribed under 701—Chapter 20.

The purchase of materials, supplies, and equipment by these persons is subject to tax unless the particular item is exempt from tax when purchased by an individual for the individual's own use. For example, the purchase for use in the office of prescription drugs would not be subject to tax nor would the purchase of prosthetic devices such as artificial limbs or eyes.

Sales of tangible personal property to dentists, which are to be affixed to the person of a patient as an ingredient or component part of a dental prosthetic device, are exempt from tax. These include artificial teeth, and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling materials.

Sales of tangible personal property to physicians or surgeons, which are prescription drugs to be used or consumed by a patient, are exempt from tax.

Sales of tangible personal property to ophthalmologists, oculists, optometrists, and opticians, which are prosthetic devices designed, manufactured, or adjusted to fit a patient, are exempt from tax. These include prescription eyeglasses, contact lenses, frames, and lenses.

The purchase by such persons of materials such as pumice, tongue depressors, stethoscopes, which are not in themselves exempt from tax, would be subject to tax when purchased by such professions.

The purchase of equipment, such as an X-ray machine, X-ray photograph or frames for use by such persons is subject to tax. On the other hand, the purchase of an item of equipment that is utilized directly in the care of an illness, injury or disease, which item would be exempt if purchased directly by the patient, is not subject to tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(13-15), 423.2 and 423.4(4).

701—18.23(422) Veterinarians. Purchase of food, drugs, medicines, bandages, dressings, serums, tonics, and the like, but not to include tools and equipment, which are used in treating livestock raised as part of agricultural production is exempt from tax. Where these same items are used in treating animals maintained as pets for hobby purposes, sales tax is due. See rule 701—18.48(422, 423) for an exemption for machinery used in livestock or dairy production which may be applicable to veterinarians but should be claimed only with caution by them.

A veterinarian engaged in retail sales, in addition to furnishing professional services, must account for sales tax on the gross receipts from such sales.

This rule is intended to implement Iowa Code sections 422.42(3) and 422.43.

701—18.24(422,423) Hospitals, infirmaries and sanitariums. Hospitals, infirmaries, sanitariums, and like institutions are engaged primarily in rendering services. These facilities shall not be subject to tax on their purchases of items of tangible personal property exempt under 701—Chapter 20 when the items would be exempt if purchased by the individual and if the item is used substantially for the tax-exempt purpose. See rule 18.59(422,423) for an exemption applicable to sales of goods and furnishing of services on and after July 1, 1998, to a nonprofit hospital.

Hospitals, infirmaries, and sanitariums may be the purchasers for use or consumption of tangible personal property used or consumed in furnishing services. *Modern Dairy Co. v. Department of Revenue*, 413 Ill. 55, 108 N.E.2d 8 (1952). However, tangible personal property can be purchased for resale by these facilities and, if purchased for resale, is exempt from tax on the purchases. *Burrows Co. v. Hollingsworth*, 415 Ill. 202, 112 N.E.2d 706 (1953); *Fefferman v. Marohn*, 408 Ill. 542, 97 N.E.2d 785 (1951). Property is purchased for resale if the conditions in subrule 18.31(1) are applicable. See also 701—subrule 15.3(2) with respect to resale exemption certificates.

Depending upon the circumstances, a nonprofit facility may be a charitable institution or organization; a profit facility is not. *Northwest Community Hospital v. Board of Review of City of Des Moines*, 229 N.W.2d 738 (Iowa 1975); *Readlyn Hospital v. Hoth*, 223 Iowa 341, 272 N.W. 90 (1937). Sales by these nonprofit facilities would be exempt from tax if the requirements of Iowa Code section 422.45(3) are met. See rule 701—17.1(422,423).

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, House File 2513, and chapter 423.

701—18.25(422,423) Warranties and maintenance contracts.

18.25(1) In general—definitions. “Mandatory warranty.” A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller. “Optional warranty.” A warranty is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller.

18.25(2) Mandatory warranties. When the sale of tangible personal property or services includes the furnishing or replacement of parts or materials which are pursuant to the guaranty provisions of the sales contract, a mandatory warranty exists. If the property subject to the warranty is sold at retail, and the measure of the tax includes any amount charged for the guaranty or warranty, whether or not such amount is purported to be separately stated from the purchase price, the sale of replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable. Labor performed under a mandatory warranty which is in connection with an enumerated taxable service is also exempt from tax.

18.25(3) Optional warranties. For periods after June 30, 1981.

a. The sale of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under Iowa Code section 422.43 is considered a sale of tangible personal property the gross receipts from which are subject to tax at the time of sale except as described below.

b. On and after July 1, 1995, the sale of a residential service contract regulated under Iowa Code chapter 523C is not considered to be the sale of tangible personal property, and gross receipts from the sales of these service contracts are no longer subject to tax, and the gross receipts from taxable services performed for the providers of residential service contracts are now subject to tax. See the examples below for more detailed explanation. A “residential service contract” is defined in Iowa Code subsection 523C.1(8) to be: a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

EXAMPLE A. John Jones purchases a residential service contract for \$3,000 on July 1, 1994. He pays \$150 of Iowa state sales tax. On December 1, 1994, his furnace malfunctions. The service company which sold Mr. Jones the contract pays Smith Furnace Repair \$700 to fix the furnace. No sales tax is due on the \$700 charge.

EXAMPLE B. Bob Jones purchases a residential service contract for \$3,000 on July 1, 1995. No sales tax is owing or paid. On December 1, 1995, his furnace becomes inoperable. The service company which sold Mr. Jones the contract pays Smith Furnace Repair \$900 to fix Mr. Jones’ furnace. Sales tax of \$45 is due based on the \$900.

c. On and after July 1, 1998, if an optional service or warranty contract is a computer software maintenance or support service contract and the contract provides for the furnishing of technical support services only and not for the furnishing of any materials, then no tax is imposed on the furnishing of those services under this subrule. If a computer software maintenance or support service contract provides for the performance of nontaxable services and the taxable transfer of tangible personal property, and no separate fee is stated for either the performance of the service or the transfer of the property, then state sales tax of 5 percent shall be imposed on 50 percent of the gross receipts from the sale of the contract. If a charge for the performance of the nontaxable service is separately stated, see subrule 18.25(5) below.

18.25(4) A preventive maintenance contract is a contract which requires only the visual inspection of equipment and no repair is or shall be included. The gross receipts from the sale of a preventive maintenance contract is not subject to tax.

18.25(5) Additional charges for parts and labor furnished in addition to that covered by a warranty or maintenance contract which are for enumerated taxable services shall be subject to tax. Only parts and not labor will be subject to tax where a nontaxable service is performed if the labor charge is separately stated.

This rule is intended to implement Iowa Code sections 422.42 and 423.2 and Iowa Code Supplement section 422.43 as amended by 1998 Iowa Acts, Senate File 2288.

701—18.26(422) Service charge and gratuity. When the purchase of any food, beverage or meals automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term “service charge” means either a fixed percentage of the total price of or a charge for food, beverage or meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, beverage or meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, beverage or meal it shall be considered a tip and not subject to tax.

Cohen v. Playboy Club International, Inc., 19 Ill. App. 3d 215, 311 N.E.2d 336; *Baltimore Country Club, Inc. v. Comptroller of Treasury*, 272 Md. 65, 321 A.2d 308.

This rule is intended to implement Iowa Code section 422.43.

701—18.27(422) Advertising agencies, commercial artists, and designers.

18.27(1) Nontaxable services. Tax does not apply to charges by advertising agencies, commercial artists, or designers for services rendered that do not represent services that are a part of a sale of tangible personal property, or a labor or service cost in the production of tangible personal property. Examples of such nontaxable services are: writing original manuscripts and news releases; writing copy for use in newspapers, magazines, or other advertising, or to be broadcast on television or radio, compiling statistical and other information; placing or arranging for the placing of advertising in media, such as newspapers, magazines, or other publications; billboards and other facilities used in public transportation; and delivering or causing the delivery of brochures, pamphlets, cards, and similar items. Charges for such items as supervision, consultation, research, postage, express, transportation and travel expense, if involved in the rendering of such services, are likewise not taxable.

18.27(2) *Agency fee or commission.* When an amount billed as an agency “fee,” “service charge,” or “commission” represents a charge or part of the charge for any of the nontaxable services described under 18.27(1), the amount so billed is not taxable. Such charge by an advertising agency will be considered to be made for nontaxable services.

18.27(3) *Items taxable.* The tax applies to the entire amount charged to clients for items of tangible personal property such as drawings, paintings, designs, photographs, lettering, assemblies and printed matter. This includes the cost of typography and reproduction proofs when the latter is used as part of a paste-up, “mechanical” or assembly. Whether the items of property are used for reproduction or display purposes is immaterial.

18.27(4) *Preliminary art.* “Preliminary art” as used herein means roughs, visualizations, comprehensives and layouts prepared for acceptance by clients before a contract is entered into or approval is given for finished art. (“Finished art” as used herein means the final art used for actual reproduction by photo-mechanical or other processes.) Tax does not apply to separate charges for preliminary art, except where the preliminary art becomes physically incorporated into the finished art as for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction.